

Toxic Substances Division of the Office of General Counsel shall advise and represent OPPTS with respect to the hearing and in any pleading or oral argument before the Administrator. An employee or other representatives of OPPTS may not participate in or advise the Administrator or any of his representatives on any decision under this part, other than as witness or counsel in public proceedings, except as provided by paragraph (b)(2) of this section. There is to be no other communication between representatives of OPPTS and the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing until after issuance of the decision of the Administrator.

(2) The Administrator may designate persons who otherwise would be regarded as representatives of OPPTS, to serve as representatives of the Office of the Administrator on matters pertaining to the hearing, and may also designate persons who otherwise would be regarded as representatives of the Office of the Administrator to serve as representatives of OPPTS. Such designations will be included in the Notice of Hearing published under § 179.20.

(3) The Office of the Administrator is responsible for the final decision of the matter, with the advice and participation of anyone in the Agency other than representatives of OPPTS.

(c) Between the date of publication of the Notice of Hearing and the date of the Administrator's final decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the Agency may have an ex parte communication with the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing. Neither the presiding officer nor any representative of the Office of the Administrator may have any ex parte communication with a person outside the Agency concerning the merits of the hearing.

(2) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk by the presiding officer at the hearing, or by the Administrator, depending on who

received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other parties and filed with the hearing clerk. A person, including a representative of a party in the hearing, who is involved in an oral communication contrary to this section, must, to the extent necessary to determine the substance of the communication, be made available for cross-examination during the hearing with respect to the substance of that communication. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted.

(d) The prohibitions specified in paragraph (c) of this section also apply to a person who, in advance of the publication of a Notice of Hearing, knows that the notice has been signed. The prohibitions become applicable to such a person as of the time the knowledge is acquired.

(e) The making of a communication contrary to this section may, consistent with the interests of justice and the policies underlying the FFDCA, result in a decision adverse to the person knowingly making or causing the making of the communication.

[55 FR 50293, Dec. 5, 1990, as amended at 57 FR 28087, June 24, 1992]

Subpart C—Participation and Appearance; Conduct

§ 179.42 Notice of participation.

(a) OPPTS shall be a party to a hearing under this part. Any other person may participate as a party in such a hearing to the extent specified by this section.

(b) A person desiring to participate in a hearing must file with the hearing clerk within 30 days after publication of the Notice of Hearing under § 179.20, a Notice of Participation in the following form:

NOTICE OF PARTICIPATION

Docket No. _____
Under 40 CFR part 179, please enter the participation of: _____
(Name) _____
(Street address) _____
(City and State) _____

Environmental Protection Agency

§ 179.70

(Telephone number) _____
Service on the above will be accepted by:

(Name) _____
(Street address) _____
(City and State) _____
(Telephone number) _____
Signed: _____
Date: _____

(c) An amendment to a Notice of Participation must be filed with the hearing clerk and served on all parties.

(d) No person may participate in a hearing who has not filed a written Notice of Participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a Notice of Participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is stricken may obtain interlocutory review thereof by the Administrator.

[55 FR 50293, Dec. 5, 1990, as amended at 57 FR 28087, June 24, 1992]

§ 179.45 Appearance.

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in §179.50.

§ 179.50 Conduct at oral hearings or conferences.

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.

Subpart D—Presiding Officer

§ 179.60 Designation and qualifications of presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's chief administrative law judge.

§ 179.70 Authority of presiding officer.

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Administrative Procedure Act. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

(a) Specify and change the date, time, and place for conferences, and issue and modify a schedule for the hearing.

(b) Establish an orderly manner for developing evidentiary facts at preliminary conferences under §179.87, for making rulings on oral testimony and cross-examination under §179.93, and for making other similar evidentiary rulings in accord with these regulations.

(c) Prepare statements of the areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.

(e) Administer oaths and affirmations.

(f) Control the course of the hearing and the conduct of the participants.

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.

(h) Rule on, admit, exclude, or limit evidence.

(i) Set the time for filing pleadings.

(j) Rule on motions and other procedural matters.

(k) Rule on motions for summary decision under §179.90.

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.

(m) Strike the participation of any person under §179.42(f), or exclude any person from the hearing under §179.50,